IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4526 of 2005
With
SPECIAL CIVIL APPLICATION No. 4997 of 2005
To
SPECIAL CIVIL APPLICATION No. 5036 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DODIA KIRIT BABULAL & 41 - Petitioner(s)

Versus

SURAT MUNICIPAL CORPORATION & 2 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner No(s).: 1,2,3,4,5,6,
7,8,9,10,11,12,13,14,15,
16,17,18,19,20,21,22,23,24,
25,26,27,28,29,30,31,32,33,
34,35,36,37,38,39,40,41.

MR PRASHANT G DESAI for Respondent No(s).: 1.
Mr H L Jani, AGP for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/06/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr Prashant Desai, learned Advocate waives service of rule for respondent no.1. Mr H L Jani, learned AGP waives service of rule for respondent no.2.

In this group of petitions, common apprehension has been expressed by the petitioners that they will be evicted from the premises occupied by them without providing them alternative accommodation by respondent no. 1. In view of the same, they have prayed for issuance of writ of mandamus to direct respondent no.1 i.e. Surat Municipal Corporation not to evict them from the premises situated on Udhna Bhestan road, Surat, without providing them with alternative accommodation.

2. We have heard Mr Tushar Mehta, learned Advocate for the petitioners and Mr P G Desai, learned Advocate for respondent no.1 and Mr H L Jani, learned AGP for respondent no.2. After hearing the learned Advocates for the parties and also on perusing the averments made in the petitions, it appears to us that by granting following directions, the grievance of the petitioners can be adequately redressed and the petitions can be disposed of accordingly:

i) Respondent no.1 shall take measurement of the site in dispute i.e. The road-line adjoining to final plot no.52 and if it is found that the petitioners' premises are falling within the boundaries of plot no.52, they shall not be disturbed.

ii) Respondent no.1 shall intimate petitioner No.41, Pratap Puri Goswami, the date on which the measurements will be taken by the officers of respondent no.1. Petitioner no.41 will be allowed to accompany him two other representatives of the petitioners on the date fixed for taking the measurements and officers of respondent no.1 shall take the measurements in their presence.

iii) If the petitioners or any of them are/is found to have encroached upon the road-line, they or he shall not raise any dispute, as agreed upon by the learned Advocate for the

petitioners subsequent to the measurements that may be taken in the presence of the aforesaid representatives of the petitioners.

iv) 23 petitioners out of 41 have already applied for alternative accommodation. So far as the petitioners who may be found to have encroached upon the road-line are concerned, their applications will be required to be considered by respondent no.1 and they shall be entitled to be provided with alternative accommodation. Those who are found to be within the boundaries of plot no.52, their applications may not be considered for this purpose since they are not to be disturbed of their possession from the premises owned and occupied by them.

v) The petitioners who have not yet applied for, can submit their applications for grant of alternative accommodation within a period of 15 days from the date of the measurement to respondent no.1, if they are found to have encroached upon the road line.

vi) Out of 23 petitioners who have already applied, 9 petitioners are shop owners and their lots have been drawn. However, out of them only 5 petitioners have approached respondent no.1 for the selection of alternative accommodation which has already been allotted to them by respondent no.1. So far as 14 other petitioners out of the 23 are concerned, they are owners of residential premises for which lots are yet to be drawn. Respondent No.1 shall, therefore, publish notice in two Gujarati dailies having wide circulation in the City of Surat indicating the date for holding the draw for grant of alternative accommodation. As and when such date is published, the 14 petitioners as also those who are still to apply and those who have already applied before that date, shall approach respondent no.1 if they are required under clause (iv) to do so and to co-operate with the process of drawing of the lots.

Vii) After the process of drawing of lots is over, respondent

no.1 shall publish in two Gujarati dailies having wide circulation in the city of Surat indicating the date on which the proposed allottees to select the sites and those petitioners who have already not done so, shall approach respondent no.1 for the selection of sites for alternative accommodation on that day.

viii) So far as the petitioners occupying residential premises are concerned, respondent no.1 shall not evict them even after the aforesaid process is over till 15.10.2005 and may allow them to occupy the premises at which they are in possession at present.

ix) If the occupiers of residential premises apply for grant of suitable/reasonable time for raising construction if vacant plots are allotted to them, their applications may be considered by respondent no.1 sympathetically.

With these directions, all these petitions are partly allowed. Rule is made absolute to that extent.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp